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RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PSG

TRICIA OGDEN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

BUMBLE BEE FOODS, LLC,

Defendant.

Case No.

CV 12-01828

**CLASS ACTION AND REPRESENTATIVE
ACTION**

**COMPLAINT FOR DAMAGES,
EQUITABLE AND INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

Plaintiff, through her undersigned attorneys, brings this lawsuit against Bumble Bee Foods, LLC ("Bumble Bee" or "Defendant") as to her own acts upon personal knowledge, and as to all other matters upon information and belief. In order to remedy the harm arising from Defendant's illegal conduct, which has resulted in unjust profits, Plaintiff brings this action on behalf of a nationwide class of consumers who, within the last four years, purchased Bumble Bee products labeled "Rich in Natural Omega-3" or "Excellent Source Omega-3" ("Misbranded Food Products").

INTRODUCTION

1. Every day, millions of Americans purchase and consume packaged foods. Identical federal and California laws require truthful, accurate information on the labels of packaged foods. This case is about a company that flouts those laws. The law, however, is clear: misbranded foods cannot legally be manufactured, held, advertised, distributed or sold. Misbranded food is worthless as a matter of law, and purchasers of misbranded food are entitled to a refund of their purchase price.

2. Bumble Bee produces a variety of seafood products, and it is best known for its tuna products. Bumble Bee represents that it is North America's largest branded shelf-stable seafood company. Bumble Bee products include canned and pouched tuna, salmon, shrimp, crab, clams, oysters, sardines, mackerel, and chicken. Bumble Bee also sells ready-to-eat chicken salad, seafood salad, tuna salad and tuna medley meal kits for such products as chicken salad, seafood salad, tuna salad and tuna medley. Bumble Bee sells sardines and other seafood products under such labels as Beach Cliff®, Brunswick® and King Oscar®.

3. Bumble Bee recognizes that health claims drive sales and actively promotes the purported health benefits of its products, notwithstanding the fact that such promotion violated California and federal law. For example, on its website Bumble Bee states:

Nourishing Lifestyles

Bumble Bee Promotes Healthy and Sustainable Lifestyles for Consumers

Bumble Bee's core seafood products are an excellent and affordable source of protein, nutrients and Omega 3 fatty acids. The healthy profile of our product portfolio affords Bumble Bee a strong basis from which to support and encourage healthy consumer lifestyles.

<http://www.bumblebee.com/about/sustainability/nourishing-life>

4. On the website discussion of its King Oscar® brand, Bumble Bee goes even further in promoting the health benefits of its sardine products, specifically focusing on Omega 3:

More and more research suggests that Omega-3's may help:

- Promote heart health by reducing artery-clogging cholesterol and triglycerides (fats) in your bloodstream.

- Lower your risk of heart attack by regulating electrical activity.
- Protect against type-2 diabetes by positively influencing your metabolism and blood pressure.
- Protect you from certain cancers, including breast cancer and leukemia.
- Benefit your immune system and improve inflammatory diseases such as rheumatoid arthritis and psoriasis.
- Improve your mood and support mental health.
- Play a vital role in the development of your baby's eyes and brain – very important for pregnant mothers.

All that good stuff and more from the Omega-3's in delicious fish. That's right, fish are the best natural source of the Omega-3's your body needs most. Especially coldwater fish such as brisling sardines, mackerel, herring, and salmon. Another big reason why nutritionists will tell you to eat more seafood – at least twice a week. At King Oscar, we say why stop there?

<http://www.kingoscar.com/health/omega-3>

5. Bumble Bee also makes health nutrient claims directly on the package of its products. For example, the labels on several of Bumble Bee's products have a seal or logo stating "excellent source of Omega 3" and "Rich in Natural Omega-3."

6. If a food manufacturer makes a claim on a food label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled. As described more fully below, Defendant has made, and continues to make, false and deceptive nutrient content claims in violation of federal and California laws that govern the types of representations that can be made on food labels. These laws recognize that reasonable consumers are likely to choose products claiming to have a health or nutritional benefit over otherwise similar food products that do not claim such benefits. More importantly, these laws recognize that the failure to disclose the presence of risk-increasing nutrients is deceptive because it conveys to consumers the net impression that a food makes only positive contributions to a diet, or does not contain any nutrients at levels that raise the risk of a diet-related disease or health-related condition.

7. Identical federal and California laws regulate the content of labels on packaged food. The requirements of the federal Food Drug & Cosmetic Act ("FDCA") were adopted by the California legislature in the Sherman Food Drug & Cosmetic Law (the "Sherman Law"). California Health & Safety Code § 109875, et seq. Under FDCA section 403(a), food is

1 “misbranded” if “its labeling is false or misleading in any particular,” or if it does not contain
 2 certain information on its label or in its labeling. 21 U.S.C. § 343(a).

3 8. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while the term
 4 “misleading” is a term of art. Misbranding reaches not only false claims, but also those claims
 5 that might be technically true, but still misleading. If any one representation in the labeling is
 6 misleading, then the entire food is misbranded, nor can any other statement in the labeling cure a
 7 misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking and
 8 the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-O-*
 9 *Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove
 10 that anyone was actually misled.

11 9. Other companies that sell similar products with similar Omega 3 nutrient content
 12 claims have been found by FDA to be in violation of the laws concerning such claims. On July
 13 15, 2011, the FDA sent a warning letter to Natural Guidance, LLC, informing the company of its
 14 failure to comply with the requirements of the Federal Food Drug and Cosmetic Act (“FDCA”)
 15 and its regulations, all of which have been expressly adopted by California in its Sherman Law
 16 (the “FDA Warning Letter,” attached hereto as Exhibit 1).

17 10. The FDA Warning Letter to Natural Guidance, LLC, stated, in pertinent part:

18 This is to advise you that the U.S. Food and Drug Administration (FDA) reviewed
 19 your websites www.naturalguidance.com¹ and www.salba.com², as recently as July
 20 2011, and has determined that your Salba® brand products are promoted for
 21 conditions that cause the products to be drugs under section 201(g)(1)(B) of the
 22 Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. § 321(g)(1)(B)]. The
 23 therapeutic claims on your website establish that the products are drugs because they
 24 are intended for use in the diagnosis, cure, mitigation, treatment or prevention of
 25 disease in humans. The marketing of the products with these claims violates the Act.
 26 You may find the Act and its implementing regulations through links on FDA's home
 27 page at www.fda.gov³.

28 Some examples of claims taken from your website at www.naturalguidance.com⁴,
 include:

...

From your webpage titled “Salba - A Superior Source of Omega-3s” at
www.salba.com/superior_source⁶:

1 “Omega-3s Benefits ...

- 2 • Child Depression
- 3 • Breast, Colon, and Prostate Cancer
- 4 • Coronary Heart Disease
- 5 • Diabetes management
- 6 • Cardiovascular Heart Disease”

7 Your Salba® brand products are not generally recognized as safe and effective for the
8 above referenced uses and therefore, the products are new drugs as defined in section
9 201(p) of the Act [21 U.S.C. § 321(p)]. Under section 505(a) of the Act [21 U.S.C. §
10 355(a)], a new drug may not be legally marketed in the U.S. without an approved
11 New Drug Application (NDA). FDA approves new drugs on the basis of scientific
12 data submitted by a drug sponsor to demonstrate that the drug is safe and effective.

13 Furthermore, because your Salba® brand products are offered for conditions that are
14 not amenable to self-diagnosis and treatment by individuals who are not medical
15 practitioners; adequate directions for use cannot be written so that a layperson can use
16 these products safely for their intended uses. Thus, your products are also misbranded
17 under section 502(f)(1) of the Act [21 U.S.C. § 352 (f)(1)] in that the labeling for
18 these drugs fails to bear adequate directions for use.

19 Misbranded Products

20 Even if your Salba products were not unapproved new drugs, your Salba Whole Seed
21 Super-grain – 16 oz., Salba Ground Seed-9.5 oz., Salba Seed Oil (12oz), Salba Seed
22 Oil Softgels, and Salba Whole Food Bars (Cranberry Nut, Mixed Berry, and Tropical
23 Fruit) would be misbranded under section 403 of the Act [21 U.S.C. 343] because
24 their labeling includes unauthorized nutrient content claims. A claim that
25 characterizes the level of a nutrient which is of the type required to be in the labeling
26 of the food must be made in accordance with an FDA regulation authorizing the use
27 of such a claim. Characterizing the level of a nutrient in food labeling of a product
28 without complying with specific requirements pertaining to nutrient content claims
for that nutrient misbrands the product under section 403(r)(1)(A) of the Act.

1. Nutrient content claims that use the defined terms “rich in,” “high,” or “excellent
source of” may be used in the labeling of a food only if the food contains 20 percent
or more of the daily value (DV) of that nutrient per reference amount customarily
consumed (RACC), as required by 21 CFR 101.54(b)(1). Such claims may not be
made about a nutrient for which there is no established DV.

However, your website, www.naturalguidance.com⁷, includes such a claim for
specific nutrients even though the food does not contain 20 percent or more of the DV
per RACC of these nutrients, in accordance with 21 CFR 101.54(b)(1):

...

2. Although various nutrient content claims for ALA, DHA, and EPA omega-3 fatty
acids have been statutorily authorized through the notification procedure in section
403(r)(3)(C) of the Act [21 U.S.C. § 343(r)(3)(C)], the claims for Omega-3 on your

1 websites do not meet the requirements for any of these claims. Specifically, among
 2 other requirements, the claims authorized under the notification procedure must
 specify whether the claim is referring to ALA, DHA, or EPA omega-3 fatty acids.¹

3 The following are examples of unauthorized Omega-3 claims on your website,
 4 www.salba.com⁸, which can be found on each product's webpage:

5 Salba Seed Oil (12 oz.) and Salba Seed Oil Softgels (90 ct.)

6 • "[N]ature's richest source of Omega-3s."

7 Salba Whole Food Bars (Tropical Fruit Cranberry Nut, and Mixed Berry)

8 • "Salba - nature's richest plant-based source of Omega-3s..."

9 In addition, the following are examples of unauthorized Omega-3 claims on your
 10 website, www.naturalguidance.com⁹, which can be found on each product's webpage:

11 Salba Whole Food Bars (Tropical Fruit, Cranberry Nut, and Mixed Berry)

12 • "Salba is nature's richest vegetarian source of ... omega-3s."

13 Salba Ground Seed - 9.5 oz. and Salba Whole Seed Super-Grain - 16 oz.

14 • "Richest Source of Omega-3s ... in Nature."

15
 16 11. The Omega 3 claims listed above that are on Bumble Bee's King Oscar website
 17 establish that Bumble Bee's products are drugs under section 201(g)(1)(B) of the FDCA [21
 18 U.S.C. § 321(g)(1)(B)], because they are intended for use in the diagnosis, cure, mitigation,
 19 treatment or prevention of disease. However, Bumble Bee's products are not generally
 20 recognized as safe and effective for the above referenced uses and, therefore, the products are
 21 "new drugs" as defined by section 201(p) of the FDCA [21 U.S.C. § 321(p)]. A new drug may
 22 not be legally marketed in the United States without prior approval from the FDA as described in
 23 section 505(a) of the FDCA [21 U.S.C. § 355(a)]. Bumble Bee's marketing of its products with
 24 these claims violates the FDCA. Further, because Bumble Bee's products are offered for
 25 conditions that are not amenable to self-diagnosis and treatment by individuals who are not
 26 medical practitioners, adequate directions for use cannot be written so that a layperson can use
 27 these products safely for their intended uses. As such, Bumble Bee's products are misbranded
 28 under section 502(f)(1) of the FDCA [21 U.S.C. § 352(f)(1)] in that the labeling for its drugs fails

1 to bear adequate directions for use.

2 12. Bumble Bee's products are also misbranded under Section 403 of the FDCA [21
3 U.S.C. 343] because their labeling includes unauthorized Omega 3 nutrient content claims.
4 Bumble Bee has made and continues to make food label claims that are prohibited by federal and
5 California law. Bumble Bee has made, and continues to make, food label claims that are
6 prohibited by federal and California law. Under federal and California law, Defendant's
7 misbranded food products cannot legally be manufactured, advertised, distributed, held or sold.
8 Defendant's false and misleading labeling practices stem from their global marketing strategy.
9 Thus, the violations and misrepresentations are similar across product labels and product lines.

10 13. Defendant's violations of law are numerous and include: (1) the illegal advertising,
11 marketing, distribution, delivery and sale of Defendant's Misbranded Food Products to
12 consumers; (2) the failure to properly disclose the high levels of fat, saturated fat and cholesterol
13 in their Misbranded Food Products on the Misbranded Food Products' packaging and labeling as
14 required by law; and (3) the failure to include statements on the Misbranded Food Products
15 packaging and labeling that are mandated by law.

16 **PARTIES**

17 14. Plaintiff Tricia Ogden is a resident of San Jose, California who purchased Defendant's
18 Misbranded Food Products in California during the four (4) years prior to the filing of this
19 Complaint (the "Class Period").

20 15. Defendant Bumble Bee is a Delaware corporation with its principal place of business
21 at 9655 Granite Ridge Dr., Suite 100, San Diego, CA 92123.

22 16. Defendant is a leading producer of retail seafood products. It sells its misbranded food
23 products to consumers through grocery and other retail stores throughout the United States and
24 California.

25 **JURISDICTION AND VENUE**

26 17. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)
27 because this is a class action in which: (1) there are over 100 members in the proposed class;
28

1 (2) members of the proposed class have a different citizenship from Defendants; and (3) the
2 claims of the proposed class members exceed \$5,000,000 in the aggregate.

3 18. The Court has jurisdiction over the federal claim alleged herein pursuant to 28 U.S.C.
4 § 1331, because it arises under the laws of the United States.

5 19. The Court has jurisdiction over the California claims alleged herein pursuant to 28
6 U.S.C. § 1367, because they form part of the same case or controversy under Article III of the
7 United States Constitution.

8 20. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28
9 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is
10 between citizens of different states.

11 21. The Court has personal jurisdiction over Defendant because a substantial portion of
12 the wrongdoing alleged in this Complaint occurred in California, Defendant is authorized to do
13 business in California, has sufficient minimum contacts with California, and otherwise
14 intentionally avails itself of the markets in California through the promotion, marketing and sale
15 of merchandise, sufficient to render the exercise of jurisdiction by this Court permissible under
16 traditional notions of fair play and substantial justice.

17 22. Because a substantial part of the events or omissions giving rise to these claims
18 occurred in this District and because the Court has personal jurisdiction over Defendants, venue is
19 proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b).

20 **FACTUAL ALLEGATIONS**

21 **A. Identical California And Federal Laws Regulate Food Labeling**

22 23. Food manufacturers are required to comply with federal and state laws and
23 regulations that govern the labeling of food products. First and foremost among these is the
24 Federal Food, Drug and Cosmetics Act ("FDCA") and its labeling regulations, including those set
25 forth in 21 C.F.R. § 101.

26 24. Pursuant to the Sherman Law, California has expressly adopted the federal labeling
27 requirements as its own and indicated that "[a]ll food labeling regulations and any amendments to
28 those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on

1 or after that date shall be the food regulations of this state.” California Health & Safety Code
2 § 110100.

3 25. In addition to its blanket adoption of federal labeling requirements, California has
4 also enacted a number of laws and regulations that adopt and incorporate specific enumerated
5 federal food laws and regulations. For example, food products are misbranded under California
6 Health & Safety Code § 110660 if their labeling is false and misleading in one or more
7 particulars; are misbranded under California Health & Safety Code § 110665 if their labeling fails
8 to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and
9 regulations adopted thereto; are misbranded under California Health & Safety Code § 110670 if
10 their labeling fails to conform with the requirements for nutrient content and health claims set
11 forth in 21 U.S.C. § 343(r) and regulations adopted thereto; are misbranded under California
12 Health & Safety Code § 110705 if words, statements and other information required by the
13 Sherman Law to appear on their labeling are either missing or not sufficiently conspicuous; are
14 misbranded under California Health & Safety Code § 110735 if they are represented as having
15 special dietary uses but fail to bear labeling that adequately informs consumers of their value for
16 that use; and are misbranded under California Health & Safety Code § 110740 if they contain
17 artificial flavoring, artificial coloring and chemical preservatives but fail to adequately disclose
18 that fact on their labeling.

19 **B. Defendant’s Food Products Are Misbranded**

20 26. Pursuant to Section 403 of the FDCA, a claim that characterizes the level of a nutrient
21 in a food is a “nutrient content claim” that must be made in accordance with the regulations that
22 authorize the use of such claims. 21 U.S.C. § 343(r)(1)(A). California expressly adopted the
23 requirements of 21 U.S.C. § 343(r) in § 110670 of the Sherman Law.

24 27. Nutrient content claims are claims about specific nutrients contained in a product.
25 They are typically made on the front of packaging in a font large enough to be read by the
26 average consumer. Because these claims are relied upon by consumers when making purchasing
27 decisions, the regulations govern what claims can be made in order to prevent misleading claims.
28

28. Section 403(r)(1)(A) of the FDCA governs the use of expressed and implied nutrient content claims on labels of food products that are intended for sale for human consumption. *See* 21 C.F.R. § 101.13.

29. An “expressed nutrient content claim” is defined as any direct statement about the level (or range) of a nutrient in the food (*e.g.*, “low sodium” or “contains 100 calories”). *See* 21 C.F.R. § 101.13(b)(1).

30. An “implied nutrient content claim” is defined as any claim that: (i) describes the food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a certain amount (*e.g.*, “high in oat bran”); or (ii) suggests that the food, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an explicit claim or statement about a nutrient (*e.g.*, “healthy, contains 3 grams (g) of fat”). 21 C.F.R. § 101.13(b)(2)(i-ii).

C. Defendant Makes Unlawful Omega 3 Nutrient Content Claims

31. Where a particular nutrient does not have an established daily value (DV) under FDA regulations, food producers may not state on their food labels that their food product is a “good source” of the nutrient, or use a comparable phrase, such as “excellent source” or “rich in.” 21 C.F.R. 101.54.

32. Federal and California regulations regulate omega 3 claims as a particular type of nutrient content claim. Because omega 3 does not have an established daily value (DV), food producers may not state on their labels that their products are a “good source” of Omega 3, or use a synonym conveying the same message. 21 CFR 101.54. If food producers employ an Omega 3 nutrient content claim, the claim must have been statutorily authorized and must specify whether the claim is referring to ALA, DHA, or EPA omega 3 fatty acids.

33. Defendant has violated 21 C.F.R. § 101.54 by representing that its products are an “excellent source” of omega 3 or “rich in” omega 3 and by failing to specify whether its omega 3 nutrient content claims are referring to ALA, DHA or EPA omega 3 fatty acids. For example, certain Bumblebee products claim to be an “excellent source of Omega 3” or “naturally rich in

1 Omega 3” but they fail to disclose that Omega 3 has no established Daily Value pursuant to FDA
2 regulations. Thus, these products violate 21 C.F.R. § 101.54.

3 34. The types of misrepresentations made above would be considered by a reasonable
4 consumer when deciding to purchase Defendant’s products. The failure to comply with the
5 labeling requirements of 21 C.F.R. § 101.54 renders Defendant’s products misbranded as a matter
6 of federal and California law. Misbranded products cannot be legally sold and are legally
7 worthless.

8 35. 21 C.F.R. § 101.13 provides the general requirements for nutrient content claims,
9 which California has expressly adopted. *See* California Health & Safety Code § 110100. 21
10 C.F.R. § 101.13 requires that manufacturers include certain disclosures when a nutrient claim is
11 made and, at the same time, the product contains certain levels of unhealthy ingredients, such as
12 fat and sodium.

13 36. 21 C.F.R. § 101.13(h)(1) provides that: “If a food ... contains more than 13.0 g of fat,
14 4.0 g of saturated fat, 60 milligrams (mg) of cholesterol, or 480 mg of sodium per reference
15 amount customarily consumed, per labeled serving, or, for a food with a reference amount
16 customarily consumed of 30 g or less ... per 50 g ... then that food must bear a statement
17 disclosing that the nutrient exceeding the specified level is present in the food....”

18 37. 21 C.F.R. § 101.13 also sets forth the manner in which that disclosure must be made,
19 as follows:

20 (4)(i) The disclosure statement “See nutrition information for ____ content” shall
21 be in easily legible boldface print or type, in distinct contrast to other printed or
22 graphic matter, and in a size no less than that required by §101.105(i) for the net
23 quantity of contents statement, except where the size of the claim is less than two
24 times the required size of the net quantity of contents statement, in which case the
disclosure statement shall be no less than one-half the size of the claim but no
smaller than one-sixteenth of an inch, unless the package complies with
§101.2(c)(2), in which case the disclosure statement may be in type of not less
than one thirty-second of an inch.

25 (ii) The disclosure statement shall be immediately adjacent to the nutrient content
26 claim and may have no intervening material other than, if applicable, other
27 information in the statement of identity or any other information that is required
28 to be presented with the claim under this section (e.g., see paragraph (j)(2) of this
section) or under a regulation in subpart D of this part (e.g., see §§101.54 and
101.62). If the nutrient content claim appears on more than one panel of the label,
the disclosure statement shall be adjacent to the claim on each panel except for the

1 panel that bears the nutrition information where it may be omitted.

2 38. To appeal to consumer preferences, Bumble Bee has repeatedly made unlawful
3 nutrient content claims on products containing disqualifying levels of fat, sodium and cholesterol.
4 These nutrient content claims were unlawful because they failed to include disclosure statements
5 required by law that are designed to inform consumers of the inherently unhealthy nature of those
6 products in violation of 21 C.F.R. § 101.13(h), which has been incorporated in California's
7 Sherman Law.

8 39. Certain Bumble Bee food products bearing the "excellent source of Omega 3" and
9 "Rich in Natural Omega-3" labels make such claims despite disqualifying levels of unhealthy
10 components without proper disclosure. For example, Bumble Bee's "Tuna Salad Original with
11 Crackers Kit" has eighteen grams of fat per labeled serving but does not bear a statement that fat
12 exceeding the specified level is present. As another example, Bumble Bee's "King Oscar
13 Sardines Mediterranean Style" have 110 milligrams of cholesterol per labeled serving but do not
14 bear a statement that cholesterol exceeding the specified level is present. The failure to include
15 the required disclosure statement renders the products at issue misbranded as a matter of law.
16 Misbranded products cannot be legally held or sold and are legally worthless.

17 40. These regulations are intended to ensure that consumers are not misled to believe that
18 a product that claims, for instance, to be an excellent source of Omega 3, but actually has
19 unhealthy levels of fat or cholesterol, is a healthy choice, because of the presence of Omega 3.

20 41. Plaintiff did not know, and had no reason to know, that Defendant's Misbranded Food
21 Products were misbranded, and bore nutrient claims despite failing to meet the requirements to
22 make those nutrient claims. Plaintiff was equally unaware that Defendant's Misbranded Food
23 Products contained one or more nutrients like fat, sodium, or cholesterol that, according to the
24 FDA, "may increase the risk of disease or health related condition that is diet related."

25 42. Based on the fat and cholesterol content of these products, pursuant to federal and
26 California law, Bumble Bee must include a warning statement adjacent to the Omega 3 nutrient
27 claim that informs consumers of the high levels of fat or cholesterol. No such fat or cholesterol
28

disclosure statement currently exists on these products. Therefore, they are misbranded as a matter of federal and California law and cannot be sold because they are legally worthless.

D. Defendant Has Violated California Law

43. Defendant has violated California Health & Safety Code § 110390, which makes it unlawful to disseminate false or misleading food advertisements, including statements on products and product packaging or labeling or any other medium used to directly or indirectly induce the purchase of a food product.

44. Defendant has violated California Health & Safety Code § 110395, which makes it unlawful to manufacture, sell, deliver, hold or offer to sell any falsely advertised food.

45. Defendant has violated California Health & Safety Code §§ 110398 and 110400, which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any food that has been falsely advertised.

46. Defendant has violated California Health & Safety Code § 110660 because its labeling is false and misleading in one or more ways, as follows:

a. Defendant's Misbranded Food Products are misbranded under California Health & Safety Code § 110665 because its labeling fails to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and the regulations adopted thereto;

b. Defendant's Misbranded Food Products are misbranded under California Health & Safety Code § 110670 because its labeling fails to conform with the requirements for nutrient content and health claims set forth in 21 U.S.C. § 343(r) and the regulations adopted thereto; and

c. Defendant's Misbranded Food Products are misbranded under California Health & Safety Code § 110705 because words, statements and other information required by the Sherman Law to appear on their labeling either are missing or not sufficiently conspicuous.

47. Defendant has violated California Health & Safety Code § 110760, which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.

48. Defendant's Misbranded Food Products are misbranded under California Health & Safety Code § 110755 because they purport to be or are represented as for special dietary uses,

1 and their labels fail to bear such information concerning their vitamin, mineral and other dietary
 2 properties as the Secretary determines to be, and by regulations prescribes as, necessary in order
 3 to fully inform purchasers as to its value for such uses.

4 49. Defendant has violated California Health & Safety Code § 110765, which makes it
 5 unlawful for any person to misbrand any food.

6 50. Defendant has violated California Health & Safety Code § 110770, which makes it
 7 unlawful for any person to receive in commerce any food that is misbranded or to deliver or
 8 proffer for deliver any such food.

9 51. Defendant has violated the standard set by 21 C.F.R. § 101.13(h), which has been
 10 incorporated by reference in the Sherman Law, by failing to include on their product labels the
 11 nutritional information required by law.

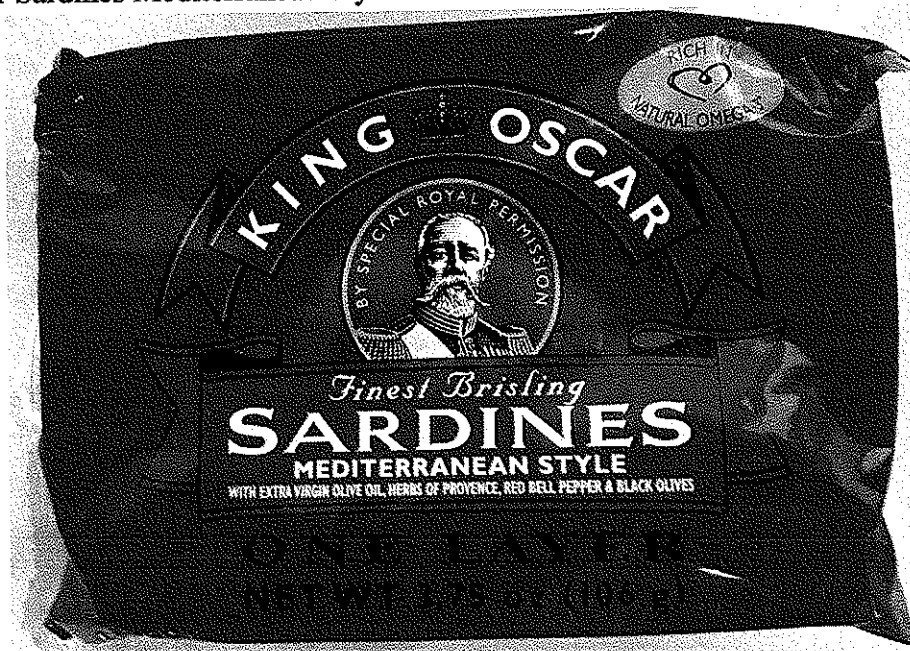
12 **E. Plaintiff Purchased Defendant's Misbranded Food Products**

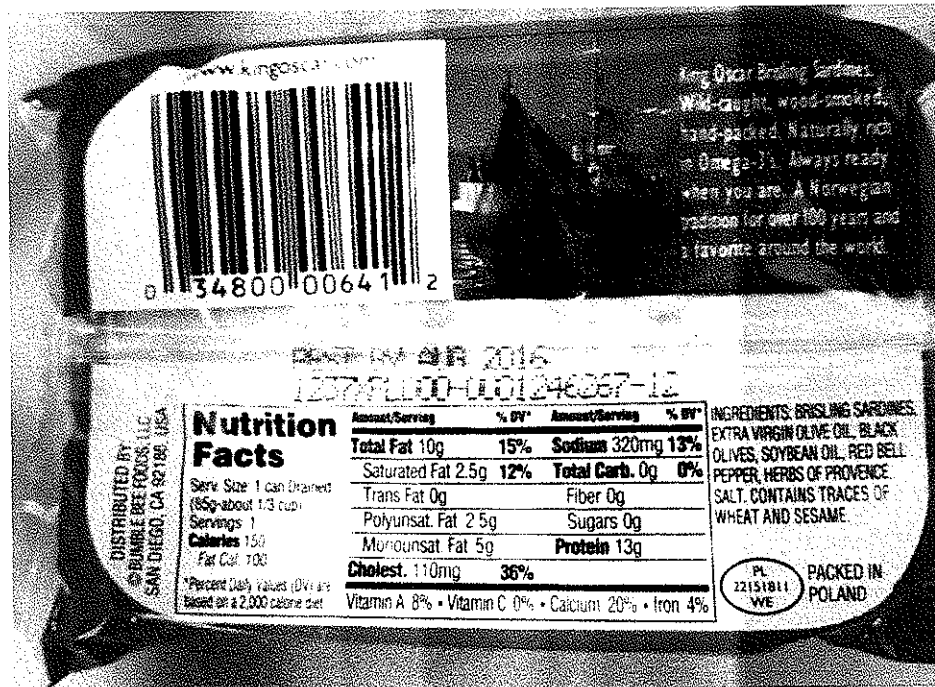
13 52. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy
 14 diet.

15 53. Plaintiff purchased Defendant's misbranded food products at issue in this Complaint
 16 on occasions during the Class Period.

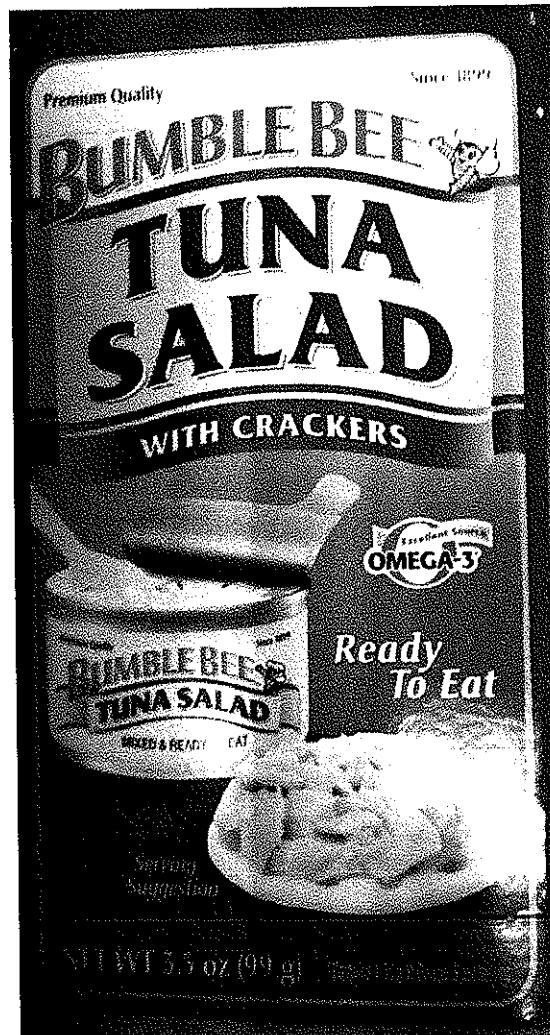
17 54. Plaintiff purchased the following products:

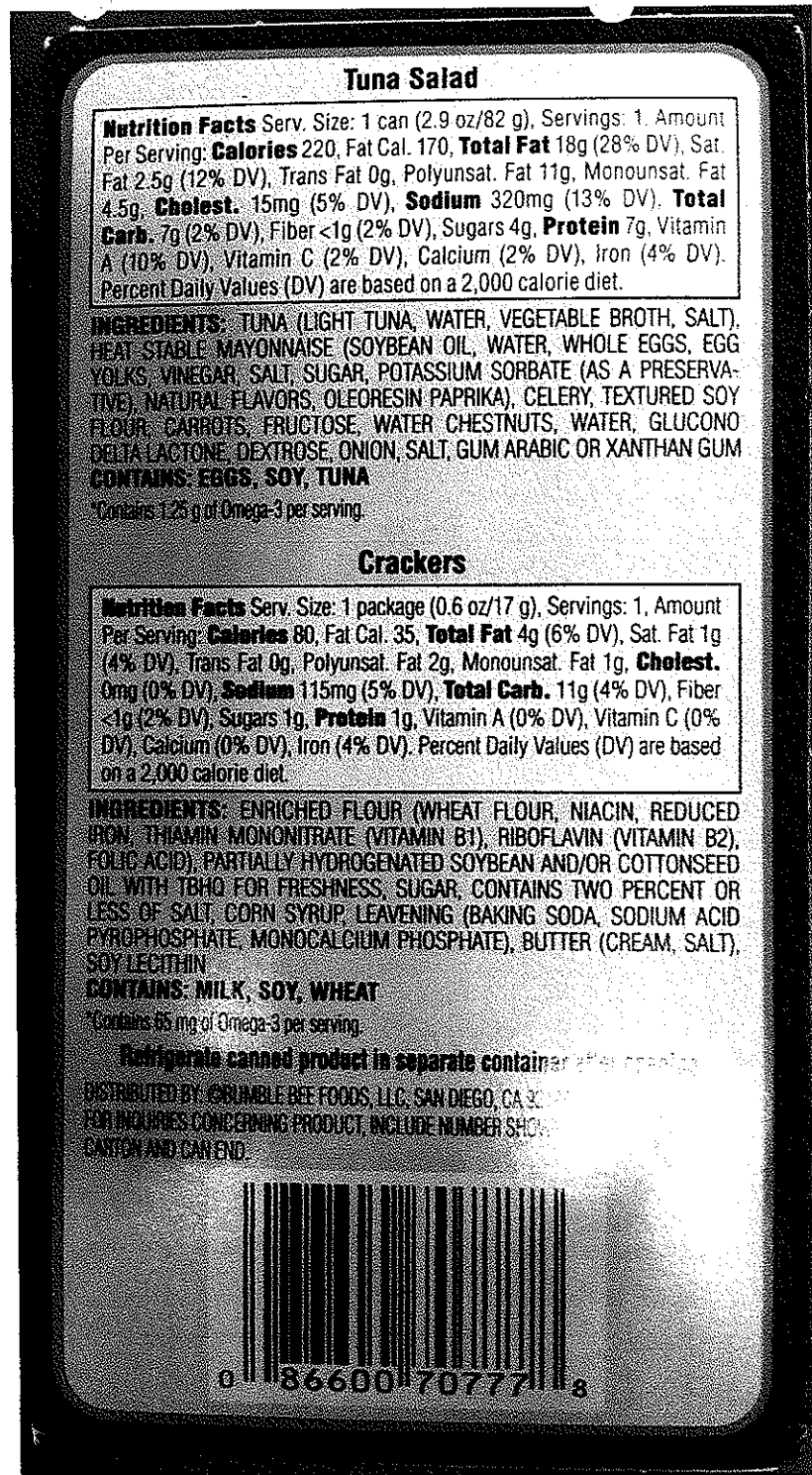
18 King Oscar Sardines Mediterranean Style





Tuna Salad with Crackers





55. Plaintiff read the labels on Defendant's Misbranded Food Products, including the Omega 3 claims, where applicable, before purchasing them. Defendant's failure to disclose that there is no established daily value for Omega 3 and failure to disclose the presence of risk-increasing nutrients in connection with its "excellent source" or "rich in" Omega 3 claims was deceptive because it falsely conveyed to the Plaintiff the net impression that the Misbranded Food

1 Products he bought made only positive contributions to a diet, and did not contain any nutrients at
2 levels that raised the risk of diet-related disease or a health-related condition.

3 56. Plaintiff relied on Defendant's package labeling including the "excellent source" and
4 "rich in" Omega 3 nutrient content claim, and based and justified the decision to purchase
5 Defendant's products in substantial part on Defendant's package labeling including the "excellent
6 source" and "rich in" Omega 3 content claims. Plaintiff would have foregone purchasing
7 Defendant's products and bought other products readily available at a lower price.

8 57. At point of sale, Plaintiff did not know, and had no reason to know, that Defendant's
9 products were misbranded as set forth herein, and would not have bought the products had she
10 known the truth about them.

11 58. At point of sale, Plaintiff did not know, and had no reason to know, that Defendant's
12 "excellent source" and "rich in" Omega 3 nutrient content claims were unlawful and unauthorized
13 as set forth herein, and would not have bought the products absent the unlawful "excellent
14 source" and "rich in" Omega 3 nutrient content claim.

15 59. As a result of Defendant's misrepresentations, Plaintiff and thousands of others in the
16 United States purchased the Misbranded Food Products at issue.

17 60. Defendant's labeling, advertising and marketing as alleged herein is false and
18 misleading and was designed to increase sales of the products at issue. Defendant's
19 misrepresentations are part of an extensive labeling, advertising and marketing campaign, and a
20 reasonable person would attach importance to Defendant's representations in determining
21 whether to purchase the products at issue.

22 61. A reasonable person would also attach importance to whether Defendant's products
23 were legally salable, and capable of legal possession, and to Defendants' representations about
24 these issues in determining whether to purchase the products at issue. Plaintiff would not have
25 purchased Defendant's Misbranded Food Products had he known they were not capable of being
26 legally held or sold.

CLASS ACTION ALLEGATIONS

62. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure 23(b)(2) and 23(b)(3) on behalf of the following class:

All persons in the United States who purchased, within the last four years, Bumble Bee products labeled "Rich in Natural Omega-3" or "Excellent Source Omega-3" (the "Class").

63. The following persons are expressly excluded from the Class: (1) Defendant and their subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Classes; (3) governmental entities; and (4) the Court assigned to this action, and its staff.

64. This action can be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable.

65. Numerosity: Based upon Defendant's publicly available sales data with respect to the misbranded products at issue, it is estimated that the Classes number in the thousands, and that joinder of all Class members is impracticable.

66. Common Questions Predominate: This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include, just for example:

- a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by failing to properly package and label their Misbranded Food Products sold to consumers;
- b. Whether the food products at issue were misbranded as a matter of law;
- c. Whether Defendant made unlawful and misleading nutrient content claims with respect to the food products it sold to consumers;
- d. Whether Defendant violated California Bus. & Prof. Code § 17200 *et seq.*, California Bus. & Prof. Code § 17500 *et seq.*, the Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*, and the Sherman Law;
- e. Whether Plaintiff and the Class are entitled to equitable and/or injunctive relief;
- f. Whether Defendant's unlawful, unfair and/or deceptive practices harmed

Plaintiff and the Classes; and

k. Whether Defendant was unjustly enriched by its deceptive practices.

67. Typicality: Plaintiff's claims are typical of the claims of the Classes because Plaintiff bought Defendant's Misbranded Food Products during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were received. Plaintiff and the Class sustained similar injuries arising out of Defendant's conduct in violation of California law. The injuries of each member of the Class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

68. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiff has retained highly competent and experienced class action attorneys to represent its interests and those of the members of the Class. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

69. Superiority: There is no plain, speedy or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of Class members' rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as the damages suffered by individual members of the Class may be relatively small, the

1 expense and burden of individual litigation would make it difficult or impossible for individual
 2 members of the Class to redress the wrongs done to them, while an important public interest will
 3 be served by addressing the matter as a class action. Class treatment of common questions of law
 4 and fact would also be superior to multiple individual actions or piecemeal litigation in that class
 5 treatment will conserve the resources of the Court and the litigants, and will promote consistency
 6 and efficiency of adjudication.

7 70. The prerequisites to maintaining a class action for injunctive or equitable relief
 8 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted or refused to act on grounds
 9 generally applicable to the Class, thereby making appropriate final injunctive or equitable relief
 10 with respect to the Class as a whole.

11 71. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3) are
 12 met as questions of law or fact common to class members predominate over any questions
 13 affecting only individual members, and a class action is superior to other available methods for
 14 fairly and efficiently adjudicating the controversy.

15 72. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be
 16 encountered in the management of this action that would preclude its maintenance as a class
 17 action.

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **Business and Professions Code § 17200, *et seq.***

21 **Unlawful Business Acts and Practices**

22 73. Plaintiff incorporates by reference each allegation set forth above.

23 74. Defendant's conduct constitutes unlawful business acts and practices.

24 75. Defendant sold Misbranded Food Products nationwide and in California during the
 25 Class Period.

26 76. Defendant is a corporation and, therefore, is a "person" within the meaning of the
 27 Sherman Law.

1 77. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of
2 Defendant's violations of the advertising provisions of Article 3 of the Sherman Law and the
3 misbranded food provisions of Article 6 of the Sherman Law.

4 78. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of
5 Defendant's violations of § 17500, *et seq.*, which forbids untrue and misleading advertising.

6 79. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of
7 Defendant's violations of the Consumer Legal Remedies Act, Cal. Civil Code § 1750, *et seq.*

8 80. Defendant sold Plaintiff and the Class Misbranded Food Products that were not
9 capable of being sold or held legally and which were legally worthless.

10 81. As a result of Defendant's illegal business practices, Plaintiff and the Class, pursuant
11 to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct
12 and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten
13 gains and to restore to any Class Member any money paid for the misbranded food products.

14 82. Defendant's unlawful business acts present a threat and reasonable continued
15 likelihood of deception to Plaintiff and the Class.

16 83. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business and
17 Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant,
18 and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten
19 gains and restore any money paid for Defendant's Misbranded Food Products by Plaintiff and the
20 Class.

21 **SECOND CAUSE OF ACTION**
22 **Business and Professions Code § 17200, *et seq.***
23 **Unfair Business Acts and Practices**

24 84. Plaintiff incorporates by reference each allegation set forth above.

25 85. Defendant's conduct as set forth herein constitutes unfair business acts and practices.

26 86. Defendant sold Misbranded Food Products nationwide and in California during the
27 Class Period.
28

1 87. Plaintiff and members of the Class suffered a substantial injury by virtue of buying
2 Defendant's Misbranded Food Products that they would not have purchased absent Defendant's
3 illegal conduct as set forth herein.

4 88. Defendant's deceptive marketing, advertising, packaging and labeling of its
5 Misbranded Food Products and its sale of unsalable misbranded products that were illegal to
6 possess was of no benefit to consumers, and the harm to consumers and competition is
7 substantial.

8 89. Defendant sold Plaintiff and the Class Misbranded Food Products that were not
9 capable of being legally sold or held and that were legally worthless.

10 90. Plaintiff and the Class who purchased Defendant's Misbranded Food Products had no
11 way of reasonably knowing that the products were misbranded and were not properly marketed,
12 advertised, packaged and labeled, and thus could not have reasonably avoided the injury suffered.

13 91. The consequences of Defendant's conduct as set forth herein outweigh any
14 justification, motive or reason therefor. Defendant's conduct is and continues to be immoral,
15 unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and
16 the Class.

17 92. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business and
18 Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant,
19 and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten
20 gains and restore any money paid for Defendant's Misbranded Food Products by Plaintiff and the
21 Class.

22 **THIRD CAUSE OF ACTION**
23 **Business and Professions Code § 17200, et seq.**
24 **Fraudulent Business Acts and Practices**

25 93. Plaintiff incorporates by reference each allegation set forth above.

26 94. Defendant's conduct as set forth herein constitutes fraudulent business practices under
27 California Business and Professions Code sections § 17200, et seq.

28 95. Defendant sold Misbranded Food products nationwide and in California during the
Class Period.

1 labeling, and promotional materials were intended as inducements to purchase Defendant's
2 misbranded food products and are statements disseminated by Defendant to Plaintiff and the
3 Class that were intended to reach members of the Class. Defendant knew, or in the exercise of
4 reasonable care should have known, that these statements were misleading and deceptive as set
5 forth herein.

6 104. In furtherance of their plan and scheme, Defendant prepared and distributed within
7 California and nationwide via product packaging and labeling, and other promotional materials,
8 statements that misleadingly and deceptively represented the composition and nature of
9 Defendant's misbranded food products. Plaintiff and the Class necessarily and reasonably relied
10 on Defendant's materials, and were the intended targets of such representations.

11 105. Defendant's conduct in disseminating misleading and deceptive statements in
12 California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable
13 consumers by obfuscating the true composition and nature of Defendant's misbranded food
14 products in violation of the "misleading prong" of California Business and Professions Code §
15 17500, *et seq.*

16 106. As a result of Defendant's violations of the "misleading prong" of California
17 Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the
18 expense of Plaintiff and the Class. Misbranded products cannot be legally sold or held and are
19 legally worthless.

20 107. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
21 entitled to an order enjoining such future conduct by Defendant, and such other orders and
22 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any
23 money paid for Defendant's misbranded food products by Plaintiff and the Classes.

24 **FIFTH CAUSE OF ACTION**
25 **Business and Professions Code § 17500, *et seq.***
26 **Untrue Advertising**

27 108. Plaintiff incorporates by reference each allegation set forth above.
28

1 109. Plaintiff asserts this cause of action against Defendant for violations of California
2 Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

3 110. Defendant sold Misbranded Food Products nationwide and in California during the
4 Class Period.

5 111. Defendant engaged in a scheme of offering Defendant's Misbranded Food Products
6 for sale to Plaintiff and the Class by way of product packaging and labeling, and other
7 promotional materials. These materials misrepresented and/or omitted the true contents and
8 nature of Defendant's Misbranded Food Products. Defendant's advertisements and inducements
9 were made in California and come within the definition of advertising as contained in Business
10 and Professions Code §17500, *et seq.* in that the product packaging and labeling, and promotional
11 materials were intended as inducements to purchase Defendant's Misbranded Food Products, and
12 are statements disseminated by Defendant to Plaintiff and the Class. Defendant knew, or in the
13 exercise of reasonable care should have known, that these statements were untrue.

14 112. In furtherance of their plan and scheme, Defendant prepared and distributed in
15 California and nationwide via product packaging and labeling, and other promotional materials,
16 statements that falsely advertise the composition of Defendant's Misbranded Food Products, and
17 falsely misrepresented the nature of those products. Plaintiff and the Class were the intended
18 targets of such representations and would reasonably be deceived by Defendant's materials.

19 113. Defendant's conduct in disseminating untrue advertising throughout California and
20 nationwide deceived Plaintiff and members of the Class by obfuscating the contents, nature and
21 quality of Defendant's misbranded food products in violation of the "untrue prong" of California
22 Business and Professions Code § 17500.

23 114. As a result of Defendant's violations of the "untrue prong" of California Business
24 and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of
25 Plaintiff and the Class. Misbranded products cannot be legally sold and are legally worthless.

26 115. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
27 entitled to an order enjoining such future conduct by Defendant, and such other orders and
28

1 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any
2 money paid for Defendant's Misbranded Food Products by Plaintiff and the Class.

3 **SIXTH CAUSE OF ACTION**
4 **Consumers Legal Remedies Act, Cal. Civ. Code §1750, et seq.**

5 116. Plaintiff incorporates by reference each allegation set forth above.

6 117. This cause of action is brought pursuant to the CLRA. This cause of action does not
7 currently seek monetary damages and is limited solely to injunctive relief. Plaintiff intends to
8 amend this Complaint to seek damages in accordance with the CLRA after providing Defendant
9 with notice pursuant to Cal. Civ. Code § 1782.

10 118. At the time of any amendment seeking damages under the CLRA, Plaintiff will
11 demonstrate that the violations of the CLRA by Defendant were willful, oppressive and
12 fraudulent, thus supporting an award of punitive damages.

13 119. Consequently, Plaintiff and the Class will be entitled to actual and punitive damages
14 against Defendant for their violations of the CLRA. In addition, pursuant to Cal. Civ. Code §
15 1782(a)(2), Plaintiff and the Class will be entitled to an order enjoining the above-described acts
16 and practices, providing restitution to Plaintiff and the Class, ordering payment of costs and
17 attorneys' fees, and any other relief deemed appropriate and proper by the Court pursuant to Cal.
18 Civ. Code § 1780.

19 120. Defendant's actions, representations and conduct have violated, and continue to
20 violate the CLRA, because they extend to transactions that are intended to result, or which have
21 resulted, in the sale of goods to consumers.

22 121. Defendant sold Misbranded Food Products nationwide and in California during the
23 Class Period.

24 122. Plaintiff and members of the Classes are "consumers" as that term is defined by the
25 CLRA in Cal. Civ. Code §1761(d).

26 123. Defendant Misbranded Food Products were and are "goods" within the meaning of
27 Cal. Civ. Code §1761(a).
28

124. By engaging in the conduct set forth herein, Defendant violated and continues to violate Sections 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant misrepresents the particular ingredients, characteristics, uses, benefits and quantities of the goods.

125. By engaging in the conduct set forth herein, Defendant violated and continue to violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant misrepresents the particular standard, quality or grade of the goods.

126. By engaging in the conduct set forth herein, Defendant violated and continue to violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant advertises goods with the intent not to sell the goods as advertised.

127. By engaging in the conduct set forth herein, Defendant has violated and continue to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that Defendant represents that a subject of a transaction has been supplied in accordance with a previous representation when they have not.

128. Plaintiff requests that the Court enjoin Defendant from continuing to employ the unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If Defendant is not restrained from engaging in these practices in the future, Plaintiff and the Class will continue to suffer harm.

SEVENTH CAUSE OF ACTION
Restitution Based on Unjust Enrichment/Quasi-Contract

129. Plaintiff incorporates by reference each allegation set forth above.

130. As a result of Defendant's fraudulent and misleading labeling, advertising, marketing and sales of Defendant's Misbranded Food Products, Defendant was enriched at the expense of Plaintiff and the Class.

131. Defendant sold Misbranded Food Products to Plaintiff and the Class that were not capable of being sold or held legally and which were legally worthless. It would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits Defendant received from Plaintiff and the Class, in light of the fact that the products were not what Defendant purported them to be. Thus, it would be unjust and inequitable for Defendant to retain the benefit without restitution to Plaintiff and the Class of all monies paid to Defendant for the products at issue.

132. As a direct and proximate result of Defendant's actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION
Beverly-Song Act (Cal. Civ. Code § 1790, et seq.)

133. Plaintiff incorporates by reference each allegation set forth above.

134. Plaintiff and members of the Class are "buyers" as defined by Cal. Civ. Code § 1791(b).

135. Defendant is a "manufacturer" and "sellers" as defined by Cal. Civ. Code § 1791(j) & (l).

136. Defendant's food products are "consumables" as defined by Cal. Civ. Code § 1791(d).

137. Defendant's nutrient and health content claims constitute "express warranties" as defined by Cal. Civ. Code § 1791.2.

138. Defendant, through its package labels, creates express warranties by making affirmations of fact and promising that its misbranded food products comply with food labeling regulations under federal and California law.

139. Despite Defendant's express warranties regarding its food products, these products do not comply with food labeling regulations under federal and California law.

140. Defendant breached its express warranties regarding Defendant's misbranded food products in violation of Cal. Civ. Code § 1790, et seq.

141. Defendants sold Plaintiff and members of the Class Defendant's misbranded food products that were not capable of being sold or held legally and which were legally worthless.

1 142. As a direct and proximate result of Defendant's actions, Plaintiff and the Class have
2 suffered damages in an amount to be proven at trial pursuant to Cal. Civ. Code § 1794.

3 143. Defendant's breaches of warranty were willful, warranting the recovery of civil
4 penalties pursuant to Cal. Civ. Code § 1794.

5 **NINTH CAUSE OF ACTION**
6 **Magnuson-Moss Act (15 U.S.C. § 2301, *et seq.*)**

7 144. Plaintiff incorporates by reference each allegation set forth above.

8 145. Plaintiff and members of the Class are "consumers" as defined by 15 U.S.C. §
9 2301(3).

10 146. Defendant is a "supplier" and "warrantor" as defined by 15 U.S.C. § 2301(4) & (5).

11 147. Defendant's food products are "consumer products" as defined by 15 U.S.C. §
12 2301(1).

13 148. Defendant's nutrient and health content claims constitute "express warranties."

14 149. Defendant, through its package labels, creates express warranties by making
15 affirmations of fact and promising that its misbranded food products comply with food labeling
16 regulations under federal and California law.

17 150. Despite Defendant's express warranties regarding its food products, these products do
18 not comply with food labeling regulations under federal and California law.

19 151. Defendant breached its express warranties regarding its misbranded food products in
20 violation of 15 U.S.C. §§ 2301, *et seq.*

21 152. Defendant sold Plaintiff and members of the Classes Defendant's misbranded food
22 products that were not capable of being sold or held legally and which were legally worthless.

23 153. As a direct and proximate result of Defendant's actions, Plaintiff and the Class have
24 suffered damages in an amount to be proven at trial.

25 **JURY DEMAND**

26 Plaintiff hereby demands a trial by jury of her claims.
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, and on behalf of the general public, prays for judgment against Defendant as follows:

A. For an order certifying this case as a class action and appointing Plaintiff and her counsel to represent the Classes;

B. For an order awarding, as appropriate, damages, restitution or disgorgement to Plaintiff and the Class for all causes of action other than the CLRA, as Plaintiff does not seek monetary relief under the CLRA, but intends to amend her Complaint to seek such relief;

C. For an order requiring Defendant to immediately cease and desist from selling its Misbranded Food Products in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell these products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;

D. For all equitable remedies available pursuant to Cal. Civ. Code § 1780;

E. For an order awarding attorneys' fees and costs;

F. For an order awarding punitive damages;

G. For an order awarding pre-and post-judgment interest; and

H. For an order providing such further relief as this Court deems proper.

Dated: April 12, 2012

Respectfully submitted,



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